Thomas Holmes *Esq*; *Appellant*, James Peacock, *Respondent*.

The CASE of the Appellant.

IN the year 1684. there was a Verbal Treaty between *Richard Peacock* (to whom the Respondent is surviving Executor) and the Appellant, concerning the said *Richard Peacock*'s intermarriage with *Anne* the Appellant's Daughter, and upon that Treaty it was agreed, that the Appellant should give to the said *Richard Peacock* in Portion with his Daughter, 1000 *l.* and in Consideration thereof *Richard Peacock* was to settle 200 *l. per Annum* upon *Anne* for her Life, by way of Rent Charge; And it was further agreed, *That in Case the said* Richard *or* Anne *should dye without Issue, then* 500 l. *part of the* 1000 l. *Portion, should be returned to the Appellant.*

The Marriage took effect, and the Appellant paid 500 *l.* part of the said Portion, but *Richard* the Husband not being able to Settle the 200 *l. per Annum* Rent Charge upon *Anne*, the other 500 *l.* was not paid.

Richard Peacock died in the year 1690. without Issue, having never made any Settlement upon *Anne* his Wife; and after his decease, the Respondent *James Peacock*, and *Samuel Brogden*, (who is since deceased) the Executors of *Richard Peacock*, brought a Bill in the Court of Chancery in *Ireland*, against the Appellant, whose Daughter the Respondent's Testator did Marry, for the recovery of 500 *l.* being insisted to be the Residue of the Portion promised by the Appellant to be given in Marriage with his Daughter; Whereupon the Appellant, by his Answer, does positively Swear, That the Agreement, as to 500 *l.* part of the Portion, was, That it should be refunded in case either the said Appellant's Daughter *Anne*, or her said Husband *Richard Peacock*, the Respondent's Testator, should happen to dye without Issue, and insists, that the said *Richard Peacock* being dead without Issue, the 500 *l.* residue of the Portion, ought not to be paid.

Upon the Hearing of this Cause, the Court directed an Issue to be Tried at Law, *viz.* Whether it was any part of the Marriage Agreement between the said *Richard*, and the Appellant, that any, and what part of the 1000 *l.* Portion, should be paid back to the now Appellant, and if any part, how much, and upon what Terms; and the Judge before whom such Cause was to be Tryed, was appointed to Certifie the Verdict.

This Issue was accordingly Tryed, and the Judge certified, that the Jury found, That it was no part of the Marriage Agreement, that any part of the said 1000 *l.* should be paid back to the Appellant.

Upon this Verdict the Court of Chancery Decreed, That the Respondent should have and recover 500 *l.* Principal Money, together with Interest, after some Allowance in abatement of Interest in respect of the Calamity of the Times in *Ireland*; and that the Respondent should also recover Costs, and this Interest to be computed by a Master.

The Master upon this Order computed Interest from the time of the Marriage, which was in 84. and by his Report dated the 3d of *February* 1698. certified 600 *l.* due for Interest.

From this Decree and Proceedings the Appellant Appeals:

First, For that the Respondent has no Pretence to have any Decree or Relief in Equity, in regard, if the 500 *l.* and Interest, be due upon the Marriage Contract, he has a plain Remedy and Demand for it at Law, and ought not to have a Decree for the same in a Court of Equity, whose Office it is only to supply the Defects of the Common Law, and not to give any Relief, for that, which, in Case there was any absolute Promise for the Payment of the whole Portion, would be plainly recoverable at Law.

Secondly, For that the Verdict upon the Issue directed was gained by ill Practices, and against the Evidence of Three positive Witnesses, as appears by the Proofs in the Cause in Chancery, who fully prove the Agreement to be, That 500 *l.* of the Portion should be returned, in case the said *Richard Peacock*, or *Anne* his Wife, should dye without Issue, and that the Appellant had made the like Agreement for the return of 500 *l.* part of the Marriage Portion of his Eldest Daughter.

Thirdly, For that the 500 *l.* Remainder of the said 1000 *l.* ought not to be Decreed to be paid, for that there was never any Deed Executed to Settle the 200 *l. per Annum* Rent Charge upon *Anne*, which was the very Inducement and Consideration for the giving the 1000 *l.* Marriage Portion.

Fourthly, For that the Decree is Erroneous as to the appointment of paying Interest for the remaining 500 *l.* because it no ways appears in the Cause when that was to be paid, at least it could never be intended that it should be paid till such time as the 200 *l.* Rent Charge was settled (which was never done) and therefore the Master should not have computed Interest from the time of the Marriage in 84. as he has done at 10 *l. per Cent.* neither is there any Reason that the said 500 *l.* (if there was any absolute Contract to pay the same) should carry Interest, there being no Agreement to pay Interest, nor the Appellant bound in any Penalty for the Payment of this 500 *l.* which might carry Interest.

For which, and other Reasons, it is humbly hoped, That Your Lordships will be pleased to Reverse the Decree pronounced in Ireland *in this Cause.*

William Peere Williams.